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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,276	12/03/2001	Claude Bergerioux	MAD-C119	7102
7590	04/26/2004		EXAMINER	
Lorusso & Loud 3137 Mount Vernon Avenue Alexandria, VA 22305			TRAN, LOUIS B	
			ART UNIT	PAPER NUMBER
			3721	13
DATE MAILED: 04/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/913,276	BERGERIOUX ET AL
	<b>Examiner</b>	<b>Art Unit</b>
	Louis B Tran	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 February 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 10,11,13 and 15-21 is/are rejected.
- 7) Claim(s) 12 and 14 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

Art Unit: 3721

## **DETAILED ACTION**

This action is in response to applicant's amendment, Paper No. 12, received on 02/03/2004.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 19-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification is not enabling for the step of transversely cutting the packaging material. Furthermore, there is no disclosure in the drawings of transverse cutting.

### ***Claim Objections***

3. Claim 21 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Currently, claim 21 depends on claim 1 which has been canceled. For the purposes of this rejection, Examiner is assuming applicant has intended to make claim 21 dependent on claim 19.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitoshi et al. (Japanese Utility Application 146545/1989) in view of Kenichi (Japanese Utility Application 05-029652).

Hitoshi et al. teaches a method of manufacturing a packaging container from a packaging material comprising attaching a cap 5 onto a cap attachment portion 6 of the packaging material, then forming the packaging material on which the cap has been attached into a predetermined shape and charging a liquid food into the formed packaging material, inherently providing a cap attachment and charging station as seen in Figures 2 and 3 (as in claim 10).

Hitoshi et al. teaches a method of manufacturing wherein the packaging material is in sheet form before forming and the packaging material on which the cap has been attached is formed into a tubular shape seen in Figures 5 (as in claim 11).

Hitoshi et al. does not show transporting a carrier sheet with a plurality of caps thereon to feed caps in succession and separating each cap in succession and attaching caps prior to forming.

However, Kenichi teaches the use of a carrier sheet with a plurality of caps and separating each cap in succession and attaching the cap prior to forming as in the abstract to reduce production costs.

Therefore, it would have been obvious to one having ordinary skill in the art to provide caps on a carrier sheet in order to reduce production costs.

6. Claims 13 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitoshi et al. (Japanese Utility Application 146545/1989) in view of Kenichi (Japanese Utility Application 05-029652) in further view of Kuzuki et al. (Japanese Utility Application 125605/1988).

Hitoshi et al. discloses the invention substantially as claimed including wherein the cap includes a collar wherein a thin walled portion is preformed in the packaging material before the packaging material is subjected to forming but does not show step (a) includes punching a hole in an area of the packaging material surrounded by the collar, welding an inner tape onto a reverse surface of an area of the packaging material around the hole in order to cover the hole and welding together the inner tape and the pull tab through the hole to thereby form a rupture portion (as in claim 13).

However, Kuzuki et al. teaches step (a) includes punching a hole in an area of the packaging material surrounded by the collar, welding an inner tape 15 onto a reverse surface of an area of the packaging material around the hole in order to cover the hole and welding together the inner tape and the pull tab 9 through the hole to thereby form a rupture portion as in Fig. 1-4 (as in claim 13) for the purpose of preserving flavor of the product as in the abstract.

Therefore it would have been obvious to one having ordinary skill in the art to provide Hitoshi et al. with an inner tape design to preserve flavor of the product.

With respect to claim 16, Hitoshi et al. teaches wherein the cap includes a lip and wherein step (a) includes punching a hole in the packaging material and welding an inner tape onto a reverse surface of the packaging material and covering the hole and welding a lip onto an outer surface of the packaging material via a pull tab, said lip at least partially surrounding the hole and at the same time welding together the inner tape and the pull tab through the hole to thereby form a rupture portion.

With respect to claim 17, Hitoshi et al. teaches wherein the cap includes a lip and wherein step (a) includes fixing a lip onto a packaging material, forming a discharge opening portion within an area of the packaging material at least partially surrounded by the lip and bonding a pull tab to the outer surface of the packaging material to cover the discharge opening portion

With respect to claim 18, Hitoshi et al. teaches further comprising bonding an inner tape 15 to the reverse surface of the packaging material to cover the discharge opening portion.

7. Claims 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hitoshi et al. (Japanese Utility Application 146545/1989) in view of Kenichi (Japanese Utility Application 05-029652) in further view of Weiteder et al. (5, 875, 958).

The modified method of Hitoshi et al. teaches the invention substantially as claimed including a thin walled portion is preformed in the packaging material before forming but does not show the cap includes a collar and step (a) includes fixing the cap onto the packaging material with the collar surrounding the thin wall portion and welding

a pull tab onto an outer surface of the packaging material in order to cover an area surrounded by the collar portion (as in claim 15).

However, Weiteder et al. teaches the cap includes a collar and step (a) includes fixing the cap onto the packaging material with the collar 3 surrounding the thin wall portion and welding a pull tab 9 onto an outer surface of the packaging material in order to cover an area surrounded by the collar portion (as in claim 15) for the purpose of creating a safe seal for safe transportation and storage as in column1, lines 36-50.

Therefore, it would have been obvious to one having ordinary skill in the art to employ a specific pull tab and collar arrangement for the purpose of creating an effective seal.

8. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitoshi et al. (Japanese Utility Application 146545/1989) in view of Kenichi (Japanese Utility Application 05-029652) in further view of Bjorck et al. (5,495,706).

The modified method of Hitoshi et al discloses the invention substantially as claimed but does not show transversely cutting a package material to form separate packaging container portions.

However, Bjorck et al. teaches the method of cutting packing material to form individual containers as in column 3, line 9, as is well known in the art for individual user usage and transportability.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Hitoshi et al. with the method of cutting material into individual packages in order to provide for individual use.

With respect to claims 20 and 21, Kenichi teaches wherein the carrier sheet is in the form of a tape carrying a single linear array of the caps.

***Allowable Subject Matter***

9. Claims 12 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. Applicant's remarks have been fully considered but are deemed moot in view of the new grounds of rejection.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ibt



Stephen F. Gerrity  
Primary Examiner